

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
ORDER

Application 29972 Permit 20823 License

**ORDER AMENDING PERMIT
BY ADDITION OF TERMS AND CONDITIONS
TO CONFORM WITH ORDER WR 96-002**

WHEREAS :

1. Permit 20823 was issued to Alfred and Linda Louie on February 6, 1996 pursuant to Application 29972 and was subsequently assigned to Leroy and Patricia Young on March 7, 1997.
2. The predecessor in interest, as Permittee, is a signatory to the March 10, 1995 Condition 12 Settlement Agreement (Agreement) between U.S. Bureau of Reclamation, Solano County Water Agency, and nearly all post-1945 appropriative water right holders in the Putah Creek watershed above Monticello Dam.
3. Order WR 96-002 (Order) was adopted by the State Water Resources Control Board (SWRCB) on February 27, 1996.
4. Both the Agreement and the Order subject the permit to specific conditions.

NOW, THEREFORE, IT IS ORDERED THAT:

The following conditions be added to the permit:

Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.
- (2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- (3) Permittee shall install and maintain devices, satisfactory to the SWRCB, capable of measuring water diverted into the reservoirs under this permit. Satisfactory devices shall include: For

Pumping Stations: (1) In-line flow meter having instantaneous and total flow reading capability, or (2) Proof of a pump test performed within the last 5 years together with official monthly power consumption records for the electric meter serving the pump. For Gravity Diversions: A weir, flume, or other flow measuring device that is properly installed, or a flow-rating curve established by volumetric measurements.

- (4) Permittee shall maintain monthly records of diversion to offstream storage from October 1 of each year to April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.
- (5) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.
- (6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.
- (7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.
- (8) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:
 - a. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.
 - b. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.
 - c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.
- (9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year, starting in the next Accumulation Season, to make up or repay permittee's

excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.

- (10) Permittee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.
- (11) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.
- (12) Permittee is hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.
- (13) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is 43 acre-feet per annum as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

The SWRCB shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

No water shall be diverted under this permit unless permittee has installed devices, as may be specified by the Agreement, that are capable of measuring the diversions under this permit such that the watermaster can calculate the Annual Depletion for this project. Said measuring devices shall be properly maintained.

(0060062)

Dated **OCTOBER 9 1997**

for 
Edward C. Anton, Chief
Division of Water Rights

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Frost Protection						
Irrigation	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	12	9N	6W	MD	25
	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	12	9N	6W	MD	25
	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	1	9N	6W	MD	25
	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	1	9N	6W	MD	25
					TOTAL	100

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 43 acre-feet per annum to be collected from November 15 of each year to April 30 of the succeeding year as follows: 5 acre-feet per annum in Reservoir No. 1, 20 acre-feet per annum in Reservoir No. 2, and 18 acre-feet per annum in Reservoir No. 3. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005i)

The maximum rate of diversion to all the three offstream storage reservoirs shall not exceed 50 gallons per minute. (000005J)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Construction work shall be completed by December 31, 1998. (0000008)

8. Complete application of the water to the authorized use shall be made by December 31, 1999. (0000009)

9. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

10. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

11. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust. (0000012)

12. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

13. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

14. During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion, storage, and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the State Water Resources Control Board.

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law. (0000021)

15. Permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure the rate and quantity of water diverted into the reservoir from Unnamed Stream tributary to Pope Creek, and water released from or flowing out of the reservoir. (0060046)

16. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in State Water Resources Control Board Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220087)

17. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento-San Joaquin Delta are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

18. No construction shall be commenced and no water shall be used under this permit until all necessary federal, state and local approvals have been obtained. (000J001)

19. "This permit is specifically subject to any legally held prior right of:

- 1) Aetna Springs Wine Ranch under appropriation issued pursuant to License 13037 (Application 26364);
- 2) Narsai David under appropriation to be issued pursuant to Applications 29686 and 29687; and
- 3) Juliana Vineyards under appropriation issued pursuant to Licenses 4464, 7830, 10881, and 10882 (Applications 13597, 15934, 20060, and 20061 respectively), and Permits 15732A, 15732B, 17786, and 19073 (Applications 22042A, 22042B, 25432, and 27209 respectively). (01608T0)

20. In order to avoid adverse impacts to the identified archaeological site and to preserve the aesthetic and biological values of the oak woodland area along Aetna Springs Road, project construction activities and project operation shall not affect the area labeled "oak woodland" on the Place of Use Map (Map 2 from the Initial Study for Application 29972) on file with the State Water Resources Control Board.
(0380500)

21. The State Water Resources Control Board reserves jurisdiction over this permit to impose or modify conditions to conform this permit to subsequent Board actions on the reservation of water established for the watershed upstream from Lake Berryessa in Board Decision 869. Action by the Board under this term will be taken only after notice to interested parties and opportunity for hearing.
(0000600)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

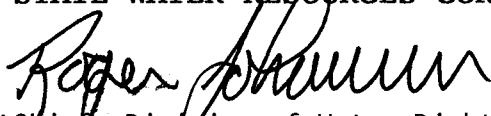
Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: February 6, 1996

STATE WATER RESOURCES CONTROL BOARD


for Chief, Division of Water Rights